

to build the case for FISA searches or surveillances of terror suspects.

Roving wiretap authority has similarly increased the FBI's efficiency in critical investigations. The FBI has obtained roving wiretap authority an average of 22 times per year. During the Senate Judiciary Committee's oversight hearing of the FBI, I asked Director Mueller if he supported the reauthorization of these tools. He told me these tools are extremely important to investigations, and he hoped the tools would be extended. Director Mueller has repeatedly expressed his support of these tools to other Senators and committees.

In September, Director Mueller appeared before the Senate Homeland Security and Governmental Affairs Committee. Chairman LIEBERMAN asked the Director if there was one thing that the Bureau needed that would assist in its counterterrorism mission. Director Mueller responded by saying:

I'll leap into the fray and say yes, the PATRIOT Act is going to be debated. I know these provisions are essential to us, particularly the first two which relate to business records and secondly the roving wiretaps. And third, while it has not been used, the lone wolf will be and is important if we get a similar situation that we had with Moussaoui in 2001. So I would urge the reenactment of those provisions.

In his response to Chairman LIEBERMAN, Director Mueller also endorsed National Security Letters as a vital tool in gathering information. He further stated that NSLs contribute to the success of investigations through "information we can gather, not of tag data or the telephone toll data that we can obtain by reason of National Security Letters. So it is retaining these capabilities that is important.

National Security Letters have come under fire from some on the left, and the substitute takes aim at them as well. Currently, NSLs cannot be used to wiretap citizens, scan e-mails, or conduct any kind of intrusive surveillance. NSLs simply allow the government to retrieve the sort of transactional records that are extremely useful in uncovering terrorist activities.

NSLs are the most effective method of obtaining this routine data that is critical to detecting, monitoring, and undermining terrorist activities. They are also regularly used to rule out individuals as terror suspects. Intelligence investigations are a mosaic. Each bit of information is laid out and compared to other data. When these records are compared to other facts or information, they become the tiles that compose the picture and provide investigators with the identities of confederates and operatives.

The Supreme Court has clearly stated the fourth amendment is not implicated when these types of records, held by third parties, are shared with the government. The High Court has reasoned that citizens hold no expectation of privacy when such records are cre-

ated through business transactions or otherwise.

The same records and data are just as easily obtained by investigators in criminal cases when they seek this information through an administrative or grand jury subpoena. This information is routinely obtained with little oversight in criminal investigations. NSLs are narrow in scope and already have multiple layers of oversight and built in protections for privacy.

Some on the left have maligned NSLs as a sinister and baleful device from George Orwell's "1984." The source of this accusation is clear: these critics have misread the findings outlined in the DOJ inspector general reviews of the FBI's use of National Security Letters.

In March 2007, the inspector general released its first report in which it criticized aspects of the FBI's use and record keeping of NSLs. I have reviewed the full report and it is clear to me that the errors identified by the IG with respect to NSLs are largely administrative in nature. Some critics have been quick to point to the IG's criticism of the FBI's use of what are called "exigent letters" as a reason to clamp down on the use of NSLs. But this is simply not supported by the evidence. Exigent letters are not—I repeat not—national security letters and the IG's findings should have no impact on whether current NSL authorities remain intact.

In March 2008, the IG issued a second report that reviewed the corrective measures as a result of the first report. The IG found that the FBI and DOJ were committed to correcting and improving the earlier identified administrative problems with NSLs. The report also stated that the FBI has made significant progress in addressing compliance issues and implementing recommendations.

Under the leadership of Director Mueller, the FBI has made great strides in correcting previous errors associated with NSLs. For example, they have revised and clarified policies and increased training on the proper issuance and handling of NSLs. They created the Office of Integrity and Compliance to ensure that the FBI continues to comply with applicable statutes, guidelines, and policies.

Most significantly, the FBI mandated the use of a Web-based, automated NSL creation system that prompts the drafter to enter all information necessary to create an NSL. This system supplies the appropriate statutory language and ensures that the NSL and the supporting memorandum are internally consistent. An NSL can be issued from this system only after all the required officials have approved it within the system. This system will go a long way toward curing the administrative errors identified by the IG.

Although both reports show that the FBI has sometimes struggled to measure up to its own internal standards in using NSLs, they also reveal that inci-

dents of misuse were infrequent and unintentional. In short, there were no abuses of NSLs as we have so often been led to believe. It is my opinion—and many in the FBI and Congress share this opinion—that the administrative errors identified by the IG could be solved easily if the FBI had a national security administrative subpoena—one type of subpoena for all national security records—just as the FBI, DEA, postal inspector, and a host of other agencies have in other types of criminal and administrative matters.

Those on the left who would prefer that the FBI not have NSL authority ignore the many investigative successes attributed to this basic tool outlined in the IG reports. For example, NSLs have provided information identifying terrorist financiers, revealed key information regarding pre-attack behavior, and detected an attempted espionage plot by a government contractor. The reports are unequivocal: NSLs are indispensable tools to national security investigations. Unfortunately, certain provisions in the S. 1692 substitute will undoubtedly have a negative effect on their operational effectiveness.

But NSLs aren't the only tool that will suffer under this substitute. New and, frankly, unprecedented minimization requirements would wreak havoc on ordinary pen registers; unreasonable and confusing standards of proof will delay, and even prevent, usage of basic tools; new reporting requirements could compromise sources and methods; and sneak-and-peek search warrants have been rendered useless. My greatest fear is that this bill will reduce our terrorist detention capability to the standard we possessed in the days preceding the horrific attacks of September 11, 2001.

I have a profound respect for the fine men and women who serve our country in our law enforcement and intelligence communities. Their focus, vigilance, and attention to detail are critical in intelligence collection, analysis, and detection of terrorist plots. Only occasionally, as in the past few weeks, does the American public hear about the successes that their tireless efforts and these basic tools bring about. But here in Congress, we know the truth and we should do all in our power to help these professionals do their jobs. I am reminded of the quote attributed to British Prime Minister Winston Churchill, who said:

We sleep sound in our beds because rough men stand ready in the night to visit violence on those who would do us harm.

We should never lose sight of the fact that we are at war. One of our greatest assets in this war is the ability to detect, investigate, and disrupt terrorist plots, the purpose of which is to harm our citizens on our own soil.

Neither this substitute nor its original bill is an improvement to the PATRIOT Act. I believe firmly that this bill could reduce our intelligence collection capability to the level that existed before the attacks of 9/11. I urge